

relevant documents to the Land Transport Department, I think the position might be different. But the ground upon which the Chief Justice held that the duty was not fulfilled was by doing nothing at all for nine months after adopting the usual practice of giving the necessary documents to the dealer and not making specific enquiries within a reasonable time and not searching the register. I have reservations that these should amount to a breach of that duty.

I agree the appeal should be allowed on the basis that the appellants had no duty to register their claim to ownership and were not precluded from denying the seller's right to sell or estopped from asserting their own title.

AFTER FURTHER ARGUMENT:

Sir Alan Huggins V.P.: There will be costs to the appellant here and below.

Sir Geoffrey Briggs P.: I agree.

Hooper J.: I agree.

Appeal allowed.

Solicitors: *Susanna Lim & Co.; Choo Chan & Wong.*

TAN SIEW HONG v. CHAI TZE YUK

[O.C.J. (Gracia J.) August 4, 1986]

[Bandar Seri Begawan – Petition No. 3 of 1985]

Family Law – Marriage – Petition for nullity – Withdrawal of – Respondent's cross-petition – Petitioner refusing to go through Chinese customary marriage ceremony – Wilful refusal by her to consummate marriage – Decree nisi to respondent – Jurisdiction.

By her petition, the petitioner sought to have her marriage to the respondent declared null and void on the ground of non-consummation. The respondent admitted that the marriage would not be consummated until after they have gone through another ceremony according to Chinese custom. He cross-petitioned for a similar declaration on the ground that the petitioner had refused to go through with the agreed Chinese marriage and alternatively had wilfully refused to consummate the marriage. The petitioner withdrew her petition with leave and did not oppose the respondent's proceeding with his cross-petition.

Held: (1) the petitioner, by refusing the respondent's many requests for arrangements to be made for the Chinese

A customary marriage to be held, had wilfully refused to consummate the marriage;

(2) the court may assume jurisdiction in divorce proceedings in accordance with the ruling in *Bong Sau Fei v. Chong Chui Lien & Anor.*⁽¹⁾;

B (3) decree nisi declaring the marriage null and void should be granted to the respondent on his cross-petition with no order as to costs.

Cases referred to:—

(1) *Bong Sau Fei v. Chong Chui Lien & Anor.* [1986] 2 M.L.J. 475.

(2) *Jodla v. Jodla* [1960] 1 All E.R. 625.

C (3) *Tan Siew Choon v. Tan Kai Ho* [1973] 2 M.L.J. 9.

DIVORCE PETITION.

Morris Lee for the petitioner.

Andrew Ong and S.P. Wong for the respondent.

D

Cur. Adv. Vult.

E Gracia J.: The petitioner sought by her petition filed on December 19, 1985, to have her marriage to the respondent declared null and void on the ground that since their marriage, they had neither cohabited, nor consummated their marriage, and that the marriage was one of convenience only. The respondent, in his answer, denies the latter allegation but admits that there was an agreement made prior to the marriage that they would not live together until the respondent was successful in his application for married quarters from his employers, and that the marriage would not be consummated until after they had gone through another ceremony according to Chinese custom. In his answer, he cross-petitioned for a similar declaration on the ground that the petitioner had refused to go through with the agreed Chinese marriage and refused to cohabit with him when asked to do so and, in the alternative, had wilfully refused to consummate the marriage.

G

H The parties were married on November 26, 1983, in a civil ceremony at the Registrar of Marriages' Chambers at Kuala Belait. The marriage was registered under section 23 of the Marriage Act, Cap. 26.

I No provision is made in any Enactment of Brunei for the dissolution of marriages contracted under the said Act but a ruling has been made by the learned Chief Justice in *Bong Sau Fei v. Chong Chui Lien & Anor.*⁽¹⁾ that jurisdiction in divorce proceedings and other related matters may be assumed by the High Court in respect of such marriages, and the provisions of the Matrimonial

Causes Act 1950 and Rules apply *mutatis mutandis* to petitions and applications made thereunder. I assumed jurisdiction in accordance with that Ruling.

At the hearing of the suit, the petitioner withdrew her petition with leave and does not oppose the respondent's proceeding with his cross-petition.

In his evidence, the respondent stated that prior to the marriage ceremony held on November 26, 1983, the parties had agreed that that ceremony was for the purpose of enabling him to apply for married quarters from his employers, and that upon his application being successful, (he estimated that approval would be granted by June, 1984), arrangements would then be made for the Chinese marriage ceremony. There was no party held to celebrate the civil marriage but, on the evening following the registration of that marriage, the bride's father hosted a party in honour of the couple's engagement. That the civil marriage was treated as an engagement is evidenced by an advertisement in a Chinese newspaper as follows:—

“Engagement Notice”
Mr. & Mrs. Chai Lee Kui
and
Mr. & Mrs. Tan Kim Chuan
of Kuala Belait

wish to notify their relatives and friends of the Engagement Ceremony of their fifth son, Tze Yen, and their second daughter, Siew Foong, held on (Sunday) the 27th day of November, 1983, corresponding to the 23rd day of the tenth month of the Kui Hai year Chinese calendar.

This 27th day of November, 1983.’

There was no cohabitation after the civil marriage, nor, according to the respondent, was there any consummation. Two weeks after the marriage, the respondent fell ill and after spending some time in Hospital here, he was sent by his employers to Singapore for further medical treatment. The petitioner visited him in that country for 3 days and it was only on that occasion that the couple lived under the same roof. No sexual intercourse took place, although the respondent did ask the petitioner, and her answer to that request was that the civil ceremony they had gone through was not a real marriage, and would not be so, as agreed, until they had gone through a Chinese customary marriage.

The parties, who are both domiciled in Brunei, returned here from Singapore to their separate homes. On May 24, 1984, the respondent's application for married quarters was approved and he and

A his mother visited the petitioner at her house so that arrangements for the agreed Chinese customary marriage could be made. The petitioner stated that she did not want to live with him and despite frequent visits to the petitioner, no arrangements were made for the ceremony to be held.
B His persistent visits for this purpose became unwelcome, so much so that on one occasion, he was threatened with assault by the petitioner's father and brother.

The respondent says, for reasons of economy, C he gave up the married quarters on December 31, 1984, but continued with his efforts to have the Chinese marriage ceremony held and for the petitioner to cohabit with him. These requests were refused and the result of these endeavours was the receipt by him of two letters written on D behalf of the petitioner by Writte's Management Services of Bandar Seri Begawan, Brunei Darussalam, one dated December 9, 1985, and another dated December 19, 1985.

The first of these two letters draws the respondent's attention to the marriage as being one of E convenience and that, because of differences which had arisen between the parties, it was suggested by the parents of the petitioner that both of them “should break rather than to drag on.” The letter also stated that the respondent was aware of the fact that no marriage existed because they F “had never lived and cohabit together in any place at any material times.”

It seems that the respondent, despite this letter, continued to visit the petitioner's house and the second letter was sent to him informing him that G a petition had been filed in the High Court and

“Tan Siew Hong complained that you and/or your mother had been going there to their house uninvited with the intention to quarrel and to create annoyance to them. Their parents have asked us to convey the message to you to stop doing so. And, if you refuse to co-operate, they H would not hesitate to report the matter to the police which may create unnecessary problem between you two.”

To reinforce their threat, enclosed with the letter were extracts from the Penal Code — sections 441 I and 446 concerning criminal trespass and the punishment therefor!

I accept the evidence of the respondent, it being unchallenged, and find that the petitioner, by refusing the respondent's many requests for arrangements to be made for the Chinese customa-

ry marriage to be held, had wilfully refused to consummate the marriage. A

In *Jodla v. Jodla*⁽²⁾ the parties, who were Roman Catholics, married at a register office but agreed that they would have a church ceremony before the marriage would be consummated. The wife made several requests to the husband to proceed with the church ceremony but he refused. It was held that the wife would be granted a decree of nullity because the wilful refusal to consummate the marriage was the husband's, as he had failed to arrange for a church ceremony, which would have been just cause for the wife, having regard to their faith, to have refused intercourse if it had ever been requested.

This case was followed in *Tan Siew Choon v. Tan Kai Ho*⁽³⁾ where the parties, both Chinese, were married at the Registry of Marriages in Singapore. It was agreed that this ceremony was to be followed by another ceremony held in accordance with Chinese custom. It was understood that there would be neither cohabitation or consummation of the marriage pending the Chinese ceremony. Despite a request from the wife that arrangements be made for the Chinese ceremony, no response was made by the husband and after waiting for several months, the wife discovered that the husband had been living with another girl for quite some time and was informed that he was engaged to marry the girl. The wife petitioned for a decree of nullity of the marriage on the ground that the marriage had not been consummated owing to the wilful refusal of the husband to consummate the marriage. On the facts, a decree nisi declaring the marriage null and void on that ground was granted to the wife.

In the present case, the respondent faces a similar situation and he is, in my judgment, entitled to the declaration sought in his cross-petition. Accordingly, a decree nisi declaring the marriage between him and the petitioner null and void is made in respect of his cross-petition on the ground of wilful refusal by the Petitioner to consummate the marriage.

The respondent does not ask for his costs and no order is made therefor.

Order accordingly.

Solicitors: Advani, Hoo, Morris & Kumar;
Choo, Chan & Wong.

SALLEH BIN HJ. ALI HASSAN v. PUBLIC PROSECUTOR

[O.Cr.J. (Roberts C.J.) October 4, 1986]

[Bandar Seri Begawan — Criminal Motion No. 30
of 1986]

Criminal Law and Procedure — Habeas corpus — Period in police lock-up — Sentence of 12 months to run from date of arrest — Whether remission applies to period in lock-up — Criminal Procedure Code (Cap. 7) s. 341 — Prisons Act (Cap. 51) ss. 2, 3, 7, 43 & 61 — Prisons Rules, rr. 31(a) & 41.

Prisons — Detention in lock-up — Remission of sentence — Prisons Act (Cap. 51), ss. 2, 3, 7, 43 & 61 — Prisons Rules rr. 31(a) & 41.

The question for decision in this application under section 341 of the Criminal Procedure Code is whether it is proper for the Director of Prisons to apply the provisions for remission of one-third sentence to that period which the applicant spent in police custody, i.e. in a police lock-up from January 28 to February 26, 1986. The applicant was sentenced on September 23, 1986 to a period of 12 months' imprisonment. The court ordered that the sentence should run from the date of the applicant's arrest, which was January 28, 1986.

Held, dismissing the application: the system of remission of sentences under the Prisons Act can apply only to periods of custody in a prison as defined in the Act itself, i.e. in a building declared to be a prison under section 3 of the Act and not to detention in a lock-up.

F CRIMINAL MOTION.

D.S. Sandhu for the applicant.

Dy. Hayati (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Roberts C.J.: This is an application under section 341 of the Criminal Procedure Code, which provides a useful summary method of obtaining relief in the nature of *habeas corpus*. Where it is alleged that a person is illegally or improperly detained in public or private custody within Brunei, an application may be made to the High Court, supported by affidavit or oral evidence, stating where and by whom the applicant is detained, and the facts relating to such detention.

I In this instance, such an application was instituted, by the proper procedure, by Mr. Sandhu, on behalf of the applicant.

The applicant was sentenced on September 23, 1986 to a period of 12 months' imprisonment. The Court ordered that the sentence should run